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ABSTRACT

This document presents excerpts from Chapter 388 of the Nevada Administrative Code, which concerns definitions, eligibility, and programs for students who are disabled or gifted/talented. The first section gathers together 36 relevant definitions from the Code for such concepts as "adaptive behavior," "autism," "gifted and talented," "mental retardation," "pre-referral intervention," "special education," and "transition services." The second section provides the regulations for administration of programs and covers such aspects as: maximum number of cases per teacher or class size and allowable exceptions; length of school day; measures to identify, assess, and serve pupils with disabilities; suspension, expulsion, or exclusion of pupils with disabilities; development of individualized educational programs; confidentiality of records; and hearing procedures. The third section collects regulations relevant to the determination of eligibility for placement. Examples include: credentials required to make diagnostic decisions, deadlines for conducting initial assessments, assessment of cognitive abilities, assessment of previous educational interventions, eligibility of pupils with autism, eligibility of pupils with traumatic brain injury, eligibility of gifted and talented pupils, periodic reassessment of pupils, and independent assessment of pupils. (DB)

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NEVADA ADMINISTRATIVE CODE

for

SPECIAL EDUCATION PROGRAMS

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CHAPTER 388

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CHAPTER 388
SPECIAL INSTRUCTIONAL SERVICES AND PROGRAMS GENERAL PROVISIONS

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GENERAL PROVISIONS

388.001 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 388.005 to 388.141, inclusive, have the meanings ascribed to them in those sections.
(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.005 "Academic achievement" defined. Except as otherwise provided in this section, "academic achievement" means the possession of basic reading skills and skills relating to oral expression, listening comprehension, written expression, reading comprehension, mathematics calculation and mathematics reasoning. In the case of a pupil under the age of 6, the term means academic readiness and the mastery of language concepts.
(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.015 "Adaptive behavior" defined. "Adaptive behavior" includes gross and fine motor skills, communication, self-help, socialization, academic ability, daily living skills, vocational skills, leisure activities, recreational activities and community utilization.
(Added to NAC by Bd. of Education, eff. 7-14-88)

388.023 "Assistive technology device" defined. "Assistive technology device" has the meaning ascribed to it in 34 C.F.R. § 300.5.
(Added to NAC by Bd. of Education, eff. 11-23-93)

For reference purposes, the federal definition of assistive technology device is cited below.

34 C.F.R. § 300.5 ***Assistive technology device.***
As used in this part, "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

388.024 "Assistive technology service" defined. "Assistive technology service" has the meaning ascribed to it in 34 C.F.R. § 300.6.
(Added to NAC by Bd. of Education, eff. 11-23-93)

For reference purposes, the federal definition of assistive technology service is cited below.

34 C.F.R. § 300.6 ***Assistive technology service.***
As used in this part, "assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes--
(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

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(c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

388.028 "Autism" defined. "Autism" means a disability which:

1. Significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner;
2. Is usually apparent before the age of 3 years; and
3. Adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.

(Added to NAC by Bd. of Education, eff. 11-23-93)

388.031 "Cognitive abilities" defined. "Cognitive abilities" means those abilities involving the processes of thinking, reasoning and problem solving.

(Added to NAC by Bd. of Education, eff. 7-14-88)

388.033 "Collaborative or consulting services" defined. "Collaborative or consulting services" means the assistance provided by special education personnel to regular teachers regarding the assessment, teaching and evaluation of a pupil with a disability in a regular educational environment.

(Added to NAC by Bd. of Education, eff. 11-23-93)

388.035 "Department" defined. "Department" means the department of education.

(Added to NAC by Bd. of Education, eff. 7-14-88)

388.041 "Developmental functioning" defined. "Developmental functioning" means cognitive abilities, gross and fine motor skills, self-help, social and emotional condition, and skill in the use of receptive and expressive language.

(Added to NAC by Bd. of Education, eff. 7-14-88)

388.043 "Gifted and talented" defined. "Gifted and talented" means a person who possesses or demonstrates outstanding ability in one or more of the following:

1. General intelligence;
2. Academic aptitude in a specific area;
3. Creative thinking;
4. Productive thinking;
5. Leadership;
6. The visual arts; or
7. The performing arts.

(Added to NAC by Bd. of Education, eff. 9-13-91)

388.045 "Health" defined. "Health" means the general physical condition of a person.

(Added to NAC by Bd. of Education, eff. 7-14-88)

388.047 "Hearing impairment" defined. "Hearing impairment" means an impairment of the hearing mechanism which affects sound integration and prevents or delays the normal development of speech and language.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)--(Substituted in revision by NAC 388.025)

388.055 "Mental retardation" defined. "Mental retardation" means a condition characterized by the possession of cognitive abilities which are significantly below average, with deficits in adaptive behavior and academic or developmental achievement.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.065 "Multiple impairments" defined. "Multiple impairments" means the occurrence of mental retardation with another disability, the combination of which causes severe educational problems for the pupil.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.067 "Orthopedic impairment" defined. "Orthopedic impairment" means an impairment which adversely affects the ability of a person to benefit from or participate in an educational program without special education.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)--(Substituted in revision by NAC 388.081)

388.071 "Parent" defined. "Parent" means a parent, an adoptive parent, a guardian, a person who is performing the duties of a parent or a surrogate parent appointed pursuant to NAC 388.283.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.073 "Participating agency" defined. "Participating agency" means any institution, entity or person that is likely to provide transition services to a pupil because it will have an impact on the pupil in his adult life.

(Added to NAC by Bd. of Education, eff. 11-23-93)

388.075 "Performance in the current educational setting" defined. "Performance in the current educational setting" means the behavioral and academic functioning of a pupil in the environment in which the majority of his education occurs.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.083 "Pre-referral intervention" defined. "Pre-referral intervention" means the services provided to a pupil before he is referred for special education. Such services may include, without limitation, providing alternative programs and methods of instruction to determine whether a referral is necessary.

(Added to NAC by Bd. of Education, eff. 11-23-93)

388.085 "Previous educational intervention" defined. "Previous educational intervention" means a strategy, developed on the basis of individual need, designed to have a remediate effect upon any academic or behavioral difficulties of a pupil. The term does not include disciplinary procedures applied to a group of pupils unless, giving consideration to the individual needs of a pupil, such procedures are demonstrably more appropriate than other strategies.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.091 "Program of instruction" defined. "Program of instruction" means a program of related or other educational services provided to a pupil with a disability.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.092 "Public agency" defined. "Public agency" means any school district or other governmental entity responsible for providing education to a pupil with a disability.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)--(Substituted in revision by NAC 388.021)

388.093 "Pupil with a disability" defined. "Pupil with a disability" has the meaning ascribed to it in NRS 388.440, but the term does not include pupils who are gifted and talented.

(Added to NAC by Bd. of Education, eff. 11-23-93)

388.095 "Regular classroom teacher" defined. "Regular classroom teacher" means a teacher having knowledge of the developmental and curricular needs of pupils at the grade level which he teaches.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.101 "Related services" defined. "Related services" has the meaning ascribed to it in 34 C.F.R. § 300.16.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

For reference purposes, the federal definition of related services is cited below.

34 C.F.R. § 300.16 ***Related services.***

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

[Definitions of terms listed in this section may be found at 34 C.F.R. § 300.16(b)(1-14).]

388.105 "Serious emotional disturbance" defined. "Serious emotional disturbance" means a severe emotional disorder that:

1. Is exhibited by a person for at least 3 months;
2. Adversely affects academic performance; and
3. Includes one or more of the following:

(a) An inability to learn which is not caused by an intellectual, sensory or health factor;

(b) An inability to engage in or to maintain interpersonal relationships with peers and teachers;

(c) Inappropriate behavior or feelings;

(d) A general and pervasive mood of unhappiness or depression;

(e) A physical symptom associated with a personal or academic problem; or

(f) The expression of fears regarding personal or academic problems.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93)

388.111 "Social and emotional condition" defined. "Social and emotional condition" means the present thoughts, feelings and interactive behavior of a person.

(Added to NAC by Bd. of Education, eff. 7-14-88)

388.115 "Special education" defined. "Special education" means instruction designed to meet the unique needs of a pupil with a disability at no cost to the parent, including, without limitation, instruction conducted in a classroom, at the pupil's home or in a hospital, institution or other place. The term includes instruction in physical education.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.117 "Specific learning disability" defined. "Specific learning disability" means a chronic condition, characterized by a deficit in essential learning processes and a severe discrepancy between predicted and actual academic achievement, which is not primarily the result of a visual, hearing or motor impairment, mental retardation, serious emotional disturbance, or an environmental, cultural or economic disadvantage.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)--(Substituted in revision by NAC 388.051)

388.121 "Speech and language" defined. "Speech and language" means skills relating to articulation, phonology, receptive language, expressive language, syntax, semantics, morphology, fluency and the use of the voice.

(Added to NAC by Bd. of Education, eff. 7-14-88)

388.125 "Speech and language impairment" defined. "Speech and language impairment" means a disorder relating to language, articulation, fluency or the use of the voice which:

1. Is outside the range of acceptable variation in a given environment;

2. Is inconsistent with the chronological or mental age of the person with the disability; or

3. Affects the emotional, social or educational adjustment of the person with the disability.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.131 "Superintendent" defined. "Superintendent" means the superintendent of public instruction.

(Added to NAC by Bd. of Education, eff. 7-14-88)

388.133 "Transition services" defined. "Transition services" has the meaning ascribed to it in 34 C.F.R. § 300.18.

(Added to NAC by Bd. of Education, eff. 11-23-93)

For reference purposes, the federal definition of transition services is cited below.

34 C.F.R. § 300.18 ***Transition services.***

(a) As used in this part, "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary

education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

(b) The coordinated set of activities described in paragraph (a) of this section must--

(1) Be based on the individual student's needs, taking into account the student's preferences and interests; and

(2) Include--

(i) Instruction;

(ii) Community experiences;

(iii) The development of employment and other post-school adult living objectives; and

(iv) If appropriate, acquisition of daily living skills and functional vocational evaluation.

388.134 "Traumatic brain injury" defined. "Traumatic brain injury" means an injury to the brain caused by an external force that results in the total or partial functional disability or psychosocial impairment of a person, or both. Except as otherwise provided in this section, the term applies to any injury to the brain which adversely affects educational performance including, without limitation, injuries affecting the:

1. Cognitive abilities;
2. Speech;
3. Language;
4. Information processing;
5. Memory;
6. Attention;
7. Reasoning;
8. Abstract thinking;
9. Judgment;
10. Problem solving abilities;
11. Sensory, perceptual and motor skill abilities;
12. Psychosocial behavior; and
13. Physical functions, of a person. The term does not include injuries to the brain that are congenital or degenerative or which are induced by trauma during birth.

(Added to NAC by Bd. of Education, eff. 11-23-93)

388.135 "Unit" defined. "Unit" means a special education program unit as defined in subsection 3 of NRS 387.1211.

(Added to NAC by Bd. of Education, eff. 7-14-88)

388.141 "Visual impairment" defined. "Visual impairment" means an impairment which, despite correction, adversely affects or will adversely affect the ability of a pupil to benefit from or participate in an educational program without the assistance of special education.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.145 Educational programs for pupils with disabilities must comply with chapter. Any educational program for pupils with disabilities in this state must be administered in accordance with the provisions of this chapter.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.150 Maximum number of cases per teacher in unit; maximum size of class; exceptions.

1. Except as otherwise provided in this section, the maximum number of cases per teacher in a unit for:

(a) The hearing impaired, moderately mentally retarded or orthopedically impaired is 20.

(b) The gifted and talented is 65.

(c) The deaf and blind is 4.

(d) Pupils with specific learning disabilities is 24.

(e) The mildly mentally retarded is 24.

(f) The severely or profoundly mentally retarded is 12.

(g) Pupils with speech and language impairments is 60.

(h) Pupils with speech and language impairments who are in a self-contained language program is 12.

(i) Pupils with multiple impairments, serious emotional disturbances or traumatic brain injuries is 15.

(j) Pupils with visual impairments is 16.

(k) Pupils with orthopedic impairments or a health impairment described in subsection 1 of NAC 388.402 who are confined at home or in a hospital is 10 per week, or 14 per week if a teacher's aide is used in the unit.

(l) Pupils in an early childhood program that is an integrated or self-contained center-based program is 24.

(m) Pupils who are autistic is 12.

(n) Pupils with a health impairment described in subsection 1 of NAC 388.402 is 20.

2. The maximum number of cases per teacher in a unit for itinerant home-based early childhood education or related services must be determined in the course of developing the individualized educational program for each pupil in the unit, on the basis of geographic considerations and according to the needs of each pupil and his parents.

3. In a departmentalized program, the maximum number of cases per teacher is to be determined according to the number of individualized educational programs for which each teacher is responsible.

4. Except as otherwise provided in this section, the maximum size of a class per instructional period for:

(a) The hearing impaired, orthopedically impaired, severely or profoundly mentally retarded, visually impaired, seriously emotionally disturbed or pupils with multiple impairments, autism or a health impairment described in subsection 1 of NAC 388.402 is 6.

(b) The gifted and talented is 20.

(c) Pupils who are deaf and blind is 4.

(d) The mildly mentally retarded, pupils with specific learning disabilities or pupils who are developmentally delayed and in center-based programs is 12.

(e) The moderately mentally retarded or pupils with traumatic brain injuries is 10.

(f) The orthopedically impaired or pupils with a health impairment described in subsection 1 of NAC 388.402 who receive homebound instruction by television is 15.

(g) Pupils with speech and language impairments who are in a program for the language impaired is 8.

(h) Pupils in early childhood programs for pupils with

(1) Hearing impairments, visual impairments, moderate mental retardation, serious emotional disturbances, orthopedic impairments, a health impairment described in subsection 1 of NAC 388.402 and multiple impairments is 6.

(2) Speech and language impairments, mild mental retardation and specific learning disabilities is 8.

(3) Severe mental retardation is 5.

5. In the case of a heterogeneous program, the maximum number of cases per teacher and the maximum size of the class is to be determined according to the area of disability represented by the majority of the pupils in the program.

6. The maximum enrollment in a unit may be increased by 10 percent, or at least one pupil, without prior approval of the department.

7. If a teacher's aide is used in a unit, the maximum size of a class in the unit may be increased by not more than:

(a) Four pupils in a unit for pupils who have multiple impairments or a health impairment described in subsection 1 of NAC 388.402 or are gifted and talented, hearing impaired, learning disabled, mildly or moderately mentally retarded, orthopedically impaired, seriously emotionally disturbed, speech and language impaired or visually impaired.

(b) Two pupils in a unit for pupils who are severely or profoundly mentally retarded, have traumatic brain injuries or autism.

(c) Two pupils in an early childhood program for pupils who have multiple impairments or a health impairment described in subsection 1 of NAC 388.402 or are hearing impaired, learning disabled, mildly or moderately mentally retarded, orthopedically impaired, seriously emotionally disturbed, speech and language impaired or visually impaired.

(d) One pupil in a unit for pupils who are deaf and blind.

8. The maximum number of cases per teacher in each unit for a specific disability must not exceed the number prescribed pursuant to this section for the disability represented by the majority of pupils in the unit even if some or all of the pupils in the unit attend classes in a regular educational environment and the special education teacher only provides collaborative or consulting services regarding such pupils.

9. Exceptions to the maximum enrollments prescribed in this section may be made with the written approval of the department.

[Dep't of Education, eff. 12-15-77]--(NAC A by Bd. of Education, 2-7-83; 7-14-88; 9-13-91; 11-23-93)

388.165 Required licensing of teachers; exception.

1. Except as otherwise provided in this section, a teacher:

(a) In a unit must be licensed in the area of special education, with an endorsement in the area of disability represented by the majority of the pupils in the unit.

(b) Of the gifted and talented must meet the requirements for licensure for teaching in a program for the gifted and talented.

2. An exception to the requirements of this section may be made with the written approval of the department.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93)

388.180 Length of school day. Except as otherwise provided by subsection 2 of NAC 387.131 and 387.286, a school day in session for a unit must consist of the minimum daily periods established for the grade by subsection 1 of NAC 387.131.

[Dep't of Education, eff. 12-15-77]--(NAC A by Bd. of Education, 2-7-83; 7-14-88)

388.195 Rights of child who attains age of majority.

1. Except as otherwise provided in subsection 2, any right accorded a parent under the provisions of this chapter devolves upon his child when that child attains the age of 18 years. In such a case, a parent may continue to participate in any meeting held pursuant to NAC 388.281 for the purpose of developing an individualized educational program for the child and have a right to access to the pupil's records pursuant to NAC 388.287.

2. If the child is adjudged incompetent and a guardian is appointed for him by a court of competent jurisdiction, any right which would otherwise devolve upon him pursuant to subsection 1 devolves upon his guardian.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.215 Measures to identify, assess and serve pupils with disabilities. Each public agency shall take measures to ensure that every pupil with a disability who resides within the district is identified, assessed and served in the manner appropriate to his disability. These measures must include:

1. The organization of a program for screening pupils within the jurisdiction of the public agency;

2. The posting or publication of public notices within the district concerning the program for screening and the availability of special services and programs of instruction for pupils with disabilities;

3. The establishment of procedures for the referral of pupils with disabilities to agencies of state and local government providing services for those pupils;

4. Communication with such agencies; and

5. The establishment of a system of records for the purpose of verifying:

(a) The implementation of the foregoing measures; and

(b) That each pupil identified as disabled is receiving services appropriate to his disability.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.245 Restrictions on placement of pupil with disability; continuum of alternative placements; annual determination of placement of pupil.

1. A pupil with a disability may not be placed in a special class, in a school different than the one he would normally attend, or otherwise removed from the regular educational environment unless:

(a) His individualized educational program otherwise provides; and

(b) The nature or severity of his disability is such that, even with the use of supplementary aids and services, he cannot be educated satisfactorily in the regular educational environment. A pupil with a disability, including a pupil in a public or private institution or other care facility, must be educated with pupils who are not disabled to the maximum extent appropriate.

2. A public agency shall provide a continuum of alternative placements to meet the needs of any pupil with a disability for special education and related services necessary to implement the individualized educational program for each pupil with a disability. This continuum must include, as appropriate:

(a) Consultative and supplementary services provided with regular class placement; and

(b) Instructing the pupil in:

(1) A regular class;

(2) A special class;

(3) A special school;

(4) A community-based program;

(5) His home;

(6) A hospital; or

(7) An institution.

3. In the case of a program of early childhood special education, the continuum of alternative placements required by subsection 2 may include, as appropriate:

(a) An integrated or self-contained center-based program in a regular or special school;

(b) A home-based program;

(c) An itinerant consultant working with a community-based facility; or

(d) Instruction of the pupil in a hospital or institution. As used in this subsection, "center-based program" means a program in which a group of pupils receives services at a central location.

4. In developing a pupil's individualized educational program, the committee which develops the program shall provide for the least restrictive environment to the maximum extent appropriate. In making this determination, the committee shall consider any potential harmful effects on the pupil and the quality of services required by the pupil. The committee shall provide for the placement of the pupil in a regular class unless the committee determines that the pupil cannot receive an appropriate education in a regular class, even with special aids and services. The basis for any such determination must be clearly set forth in the individualized educational program of the pupil.

5. Unless his needs or performance preclude such participation, a pupil with a disability must be allowed to participate with pupils who are not disabled at mealtime, recess, or any other nonacademic or extracurricular activity occurring at school for the maximum extent appropriate. If a pupil with a disability is excluded from such participation because of his needs or performance, the basis for the exclusion must be clearly set forth in the individualized educational program of the pupil.

6. The placement of a pupil with a disability must be determined at least annually. A pupil must be placed in the school he would normally attend if possible, or in the school closest to his home which is capable of providing the services required by his individualized educational program.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.255 Basis for change in placement of pupil with disability. Any change in the placement of a pupil with a disability must be based upon:

1. The current individualized educational program of the pupil;

2. An assessment of the pupil made within the preceding 3 years; and

3. Information relating to the current educational performance of the pupil.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.265 Suspension, expulsion or exclusion of pupil with disability.

1. No pupil with a disability, other than a pupil who is gifted and talented, may be suspended, expelled or excluded from attendance by a public agency for more than 10 days during any school year except upon compliance with the provisions of this section.

2. Before initiating any such suspension, expulsion or exclusion, the public agency shall convene a meeting of the multidisciplinary team appropriate to the disability of the pupil who is the subject of the proposed action. The multidisciplinary team shall determine whether the disciplinary problems of the pupil are associated with his disability and prepare a report containing its findings and conclusions.

3. After the meeting of the multidisciplinary team, the public agency shall convene a meeting of the committee responsible for developing the pupil's individualized educational program. That committee, having regard for the findings of the multidisciplinary team and in accordance with the provisions of NAC 388.281, shall revise the individualized educational program of the pupil as it deems appropriate under the circumstances.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93)

388.275 Development of interim individualized educational program.

1. An interim individualized educational program may be developed by a public agency for a pupil with a disability, other than a gifted and talented pupil, who is being considered for special education services if the pupil was determined to be eligible for special education by another public agency or in another state.

2. Upon the expiration of 30 days after the development of an interim individualized educational program pursuant to this section, an individualized educational program must be developed for the pupil in the manner provided by NAC 388.281.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93)

388.281 Development of individualized educational program. Except as otherwise provided in NAC 388.282:

1. Before providing special services and programs of instruction for pupils with disabilities, other than gifted and talented pupils, a public agency shall adopt a procedure whereby an individualized educational program is developed for each such pupil. The procedure adopted must ensure that an individualized educational program is in effect at the beginning of each school year and before the initiation of special education or related services. For eligible children making the transition from programs operated pursuant to 20 U.S.C. §§ 1471-1485, an individualized educational program must be developed and implemented by the child's third birthday.

2. The individualized educational program for a pupil must be developed, reviewed and revised by a committee which includes at least:

(a) A representative of the public agency, other than the teacher of the pupil, who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of pupils with disabilities;

(b) The pupil's teacher, if he has had one in the public agency;

(c) If he has not had a teacher in the public agency, a person qualified to teach him;

(d) One or both of the pupil's parents;

(e) The surrogate parent assigned pursuant to NAC 388.283, if one is appointed;

(f) If the committee is meeting to develop an initial program for a pupil, a person who is familiar with the tests and other assessments performed on or by the pupil and their results; and

(g) Except as otherwise provided by subsection 5, if the committee is meeting to develop an individualized educational program which includes transition services, the pupil and a representative of the participating agency. At least one member of the committee must have personal knowledge about the personnel and options for placement available to provide special education and related services to the pupil.

3. The parents or their representative and the representative of the public agency may each ask such other persons, including the pupil, as they deem appropriate to join the committee.

4. The public agency shall:

(a) At least annually, initiate and conduct the meetings of the committees formed to develop the individualized educational programs;

(b) Maintain detailed records of each such program and the procedure followed in developing it;

(c) Implement each program as soon as possible after it is developed;

(d) Take whatever action is necessary, including arranging for an interpreter for parents who are deaf or whose native language is other than English, to ensure that parents who attend a committee meeting understand the proceedings;

(e) Provide the services and instruction deemed necessary for the pupil by the committee; and

(f) Initiate and conduct additional meetings of the committees formed to develop the individualized educational programs to identify alternative methods of providing transition services or to revise the individualized educational program of a pupil with a disability when a participating agency fails to provide an agreed upon service.

5. The public agency shall schedule the meeting for a time and at a place that is mutually agreed upon by the parents of the pupil and the public agency. The public agency shall give the parents of the pupil written notice of the purpose, date, time and location of the committee meeting and a list of the persons who will attend the meeting. If transition services for a pupil will be discussed at the meeting, the pupil must be invited to attend the meeting and this purpose must be set forth specifically in the written notice to the parents. The notice must be given sufficiently far in advance of the meeting to enable the parents to make arrangements to attend.

6. If the parents do not acknowledge receipt of the notice given pursuant to subsection 5, the public agency shall attempt to notify them by telephone or through a visit to their home or place of employment. If, after consultation concerning the time and place of the meeting, the parents are unable to attend the committee meeting in person, the public agency shall use reasonable efforts to secure their participation in the meeting by written, telephonic or other means. The public agency shall keep detailed records of any telephone calls, correspondence or visits made or had pursuant to this section and their results, if any.

7. If the reasonable efforts of the public agency to involve the pupil's parents are unsuccessful, the parents shall be deemed unavailable and the public agency shall develop an individualized educational program without the parents.

8. If the individualized educational program includes transition services and a representative of the participating agency does not attend the meeting, the public agency shall consult with the participating agency regarding the planning of such services. If the pupil for whom the individualized educational program is being developed does not attend the meeting and the program includes transition services, the public agency shall document the alternative methods that were used to ascertain the preferences and interests of the pupil at the meeting.

9. The committee shall:

(a) Meet to develop the pupil's program no later than 30 calendar days after it is determined that the pupil is eligible for special services and programs of instruction.

(b) Base the program it develops on the results of an assessment made in accordance with NAC 388.330 to 388.440, inclusive.

(c) Review the program at least annually and revise it as necessary.

(d) Provide a copy of the program and any revisions to the parents if they so request.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 9-13-91; 11-23-93)

388.282 Placement of pupil with disability in private school or facility.

1. A public agency shall provide a pupil with a disability, other than a gifted and talented pupil, who is placed in or referred to a private school or facility by the department or the public agency with special education and related services at no cost to the parents and in accordance with the pupil's individualized educational program.

2. Except as otherwise provided in subsection 3, before a public agency places a pupil with a disability in or refers such a pupil to a private school or facility, the public agency shall initiate and conduct a meeting to develop an individualized educational program for the pupil. The public agency shall request the presence of a teacher or other representative of the private school at the meeting. If a representative is unable to attend the meeting, the public agency shall include him with written or telephone communication.

3. Notwithstanding the placement of a pupil in a private school or facility as provided in this section, the public agency:

(a) Remains responsible for implementing the individualized educational program of the pupil; and

(b) Must serve the pupil as it serves pupils with disabilities in public schools.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 9-13-91; 11-23-93)

388.283 Appointment of surrogate parent for pupil with disability.

1. A public agency shall appoint or petition the superintendent to appoint a surrogate parent for a pupil with a disability, other than a gifted and talented pupil, when the:

(a) Parents cannot be identified;

(b) Location of a parent is not discovered after reasonable efforts; or

(c) Pupil is a ward of the state.

2. A person selected as such a surrogate parent must have no interest that conflicts with the interests of the pupil and have knowledge and skills that ensure the adequate representation of the pupil's interests. The surrogate parent must not be an employee of the public agency which is involved in the education or care of the pupil, but he may be paid by the public agency to serve as the surrogate parent.

3. The surrogate parent shall represent the pupil in all matters relating to the identification of a pupil, the assessment of any special educational needs of the pupil, the educational placement of the pupil and the provision of a free appropriate program of public education to the pupil. The program must be provided for the pupil without any cost to the parent.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 9-13-91; 11-23-93)

388.284 Contents of individualized educational program.

1. Except as otherwise provided in subsection 2, each committee shall include in the individualized educational program it develops:

(a) A statement of the pupil's present levels of educational performance;

(b) A statement of the annual goals, including the short-term instructional objectives set for the pupil;

(c) A statement of the specific special education and related services to be provided to the pupil and the extent to which he will be able to participate in regular educational programs;

(d) A statement of the assistive technology devices and services necessary for the pupil to be able to receive a free appropriate public education;

(e) A statement of the transition services required, if any, for each pupil and a statement of the responsibilities of each public agency in providing such services;

(f) The projected dates for the initiation of the services described in paragraphs (c), (d) and (e) and the anticipated duration of such services;

(g) A statement of the appropriate objective criteria, evaluative procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved;

(h) A statement of any modifications, including supplementary aids and services, deemed necessary to ensure the pupil's participation in the regular education program;

(i) If the pupil is entering the public agency from another public agency, provisions relating to case management and interagency transition services;

(j) A statement of the reasons for the placement of the pupil, including a statement of the other placements considered by the team and the reasons why the team rejected a less restrictive placement; and

(k) A schedule of meetings with the pupil, if appropriate, and his parents to discuss the pupil's progress. As used in this subsection, "short-term instructional objective" means a measurable, intermediate step between the pupil's present level of educational performance and the annual goals set for the pupil.

2. If the public agency deems it appropriate, any required transition services must commence not later than when the pupil attains the age of 14 years, but the services must commence in any event not later than when the pupil attains the age of 16 years. If the committee determines that a pupil does not require transition services, it also shall include in the individualized educational program a statement that such services are not required and the basis for its determination.

3. If a pupil has a speech impairment and no other disability, the individualized educational program developed for him may be limited to a statement of his speech needs.

4. If both an individualized educational program and another individualized plan or program of services is required to be prepared for a pupil, the latter plan or program may be incorporated in the individualized educational program.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93)

388.287 Inspection and review of educational records of pupil.

1. The parents of a pupil must be allowed to inspect and review any educational records relating to their child which are collected, maintained or used by a public agency. The public agency shall comply with such request without unnecessary delay and in any event:

(a) Before any meeting regarding an individualized educational program or any hearing relating to the identification, assessment or placement of the pupil or the provision of a free appropriate public education; or

(b) Not later than 45 days after the request has been made. Both the parents and the public agency may obtain and respond with reasonable interpretations and explanations of the information contained in the educational records.

2. The parents may:

(a) Make reasonable requests for the public agency to explain and interpret the records;

(b) Have their representative inspect and review the records; and

(c) Request that the public agency provide them with copies of the records if, without the copies, any meaningful review of the records is impractical.

3. A public agency may presume that the parent has authority to inspect and review records relating to the pupil unless the public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation or divorce.

4. Each public agency shall keep a record of the persons other than parents and authorized employees given access to educational records it collects, maintains or uses. The record must include the:

(a) Name of the person;

(b) Date access was given;

(c) Purpose for which the person is authorized to use the records; and

(d) List required by subsection 6.

5. If any educational record contains information on more than one pupil, the parents may inspect and review only the information relating to their child or be informed of that specific information.

6. The public agency shall maintain and provide to parents on request a list of the types and locations of educational records it collects, maintains or uses relating to pupils.

7. If the public agency charges a fee for copies of records which are made for parents, the amount of the fee must not effectively prevent the parents from exercising their right to inspect and review those records. No fee may be charged for the search or

retrieval of the information.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93)

388.288 Amendment of educational records; hearing.

1. A parent who believes that information in educational records is inaccurate, misleading or violates the privacy or other rights of the pupil may request an amendment of the information. The public agency shall determine whether to amend the information in accordance with the request within a reasonable period of time after the receipt of the request. If the decision is to refuse to amend the information, the public agency shall inform the parent of the refusal in writing and shall include the reason for the refusal and advise him of his right to a hearing.

2. The public agency shall, upon request, provide an opportunity for a hearing to challenge information in educational records to ensure that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the pupil. If, as a result of the hearing, it is decided that the information is:

(a) Inaccurate, misleading or otherwise in violation of the privacy or other rights of the pupil, the public agency shall amend the information accordingly and so inform the parents in writing.

(b) Not inaccurate, misleading or otherwise in violation of the privacy or other rights of the pupil, the parent may place in the records a statement commenting on the information or setting forth any reasons for disagreeing with the decision. The public agency shall retain any such explanation placed in the records of the pupil as part of the records of the pupil as long as the record or contested portion is maintained. If the records of the pupil are disclosed to any person, the explanation must also be disclosed.

3. A hearing held pursuant to subsection 2 must be conducted in accordance with the applicable procedures set (forth in the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §§ 1221 note, 1232(g)) and the regulations adopted thereunder.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93)

388.388 Amendment of education records.

1. Each public agency shall:

(a) Protect the confidentiality of personally identifiable information at its collection, storage, disclosure and destruction;

(b) Appoint one official to assume responsibility for ensuring the confidentiality of any personally identifiable information;

(c) Train or instruct all persons collecting or using personally identifiable information regarding these policies and procedures; and

(d) Maintain a current listing for public inspection of the names and positions of those employees within the district who may have access to personally identifiable information.

2. Each public agency shall:

(a) Inform the parents when the personally identifiable information is no longer needed to provide educational services to the pupil;

(b) Maintain a permanent record of the pupil's name, address, telephone number, grades, attendance, classes he attended, grades he completed and the year he completed them; and

(c) Upon the request of the parent of a pupil, destroy any personally identifiable information, except the information listed in paragraph (b), which is no longer necessary to provide educational services.

3. A public agency shall not disclose any confidential information on a pupil contained in educational files to any person who is not employed by the public agency, department or other authorized public agency without first obtaining the consent of the parents in writing.

4. A public agency shall not disclose personally identifiable information except as authorized by law.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93)

388.290 Required facilities and space.

1. The facilities and the assignment of space to special programs for pupils with disabilities must be comparable to the facilities and space assigned for regular programs in the school. For the purposes of this subsection, "comparable" means substantially equivalent, giving consideration to lighting, acoustics, ventilation, furnishings, materials and the special needs of the pupils enrolled.

2. A permanent school building must be constructed to allow free access by pupils with disabilities.

[Dep't of Education, eff. 12-15-77]--(NAC A by Bd. of Education, 2-7-83; 7-14-88; 11-23-93)

388.292 Notice of project to identify, locate or assess pupils or educational data.

1. Before a public agency begins a major project involving the identification, location or assessment of pupils or educational data, it must publish a notice in newspapers or by other communication media with circulation adequate to notify parents throughout the state of the proposed project.

2. The notice must include:

(a) A description of the extent to which the notice is given in the native languages of the various population groups in the state;

(b) A description of the pupil on whom personally identifiable information is maintained;

(c) The types of information sought;

(d) A description of the methods and sources to be used in gathering the information;

(e) The uses to be made of the information;

(f) A summary of the policies and procedures to be followed regarding the storage, disclosure to any interested third parties, retention and destruction of personally identifiable information; and

(g) A description of all of the rights of parents and pupils regarding this information, including the rights under Section 438 of the General Education Provisions Act (20 U.S.C. §§ 1221 et seq.) and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §§ 1221 note, 1232 (g)), and the related regulations.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93)

388.294 Monitoring of units and programs.

1. The department will monitor each unit to determine whether the unit is in compliance with this chapter.

2. Each public agency which provides an educational program for pupils with disabilities shall establish a procedure for monitoring the program to ensure that it complies with the provisions of this chapter.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93)

388.296 Reports to department concerning programs and units.

1. Any information or report required to be furnished to the department by a public agency providing an educational program for pupils with disabilities must be furnished in the form and manner prescribed by the department.

2. A public agency shall submit the requested information regarding each unit receiving apportionment to the special education branch of the department at the beginning of each school year and as changes occur.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 11-23-93)

388.300 Parental consent to assessment or provision of special education; notice to parents concerning pupil with disability; hearing.

1. Except as otherwise provided in this section or NAC 388.440, a pupil

may not be assessed or provided with special education and related services without the written consent of his parents. If a parent does not provide written consent for the preplacement assessment or the initial provision of special education, the public agency may request a hearing pursuant to this section. After a pupil is initially placed in special education, no additional consent may be required as a condition of any continuing benefit to the pupil.

2. A public agency shall notify the parents of a pupil with a disability, other than a gifted and talented pupil, within a reasonable time before any proposed or refused action regarding the:

(a) Placement of the pupil;

(b) Identification or assessment of any special educational needs of the pupil; or

(c) Provision of a free appropriate public education to the pupil.

If a parent does not agree to the proposed or refused action of the public agency, the public agency or the parent may request mediation through the department or may request a fair and impartial hearing on the proposed action, or the parent may withhold the consent required by subsection 1, if that subsection applies.

3. The notice of the public agency's action must be written in language understandable to the general public and in the native language of the parent unless that is clearly not feasible. If the native language or other method of communication that is used in the home is not written, the public agency shall ensure that the notice is read to the parent in the native language or communicated to the parent by another method of communication and that the parent understands the notice. The public agency shall maintain written evidence of the parent's understanding of the translated notice.

4. The public agency shall include in the notice:

(a) A description of the action proposed or refused by the public agency;

(b) The reasons for the proposal or refusal;

(c) A description of any options the public agency considered and the reasons why those options were rejected;

(d) A description of the assessment procedures, tests, records or reports upon which the action is based;

(e) Any other factors which are relevant to the public agency's proposal or refusal; and

(f) A statement of all of the parent's rights in the matter, including his right to:

(1) Obtain a hearing under this section;

(2) Challenge or withhold consent to the action;

(3) Obtain an independent assessment of the pupil;

(4) Be provided with a list of public and private agencies from whom the assessment may be obtained; and

(5) Request a court to award attorney's fees and related costs in any action brought pursuant to 20 U.S.C. § 1415(e) if the parent is the prevailing party.

5. If the parent desires a hearing regarding the public agency's proposal or refusal, he must:

(a) Submit a written request for the hearing to the head of the public agency; and

(b) Include with the request a statement of his reasons for opposing the public agency.

6. Within 5 days after he receives a request pursuant to subsection 5, the head of the public agency shall request the superintendent of public instruction to appoint a hearing officer. The superintendent, upon receiving such a request, shall:

(a) Appoint an impartial hearing officer from the list of hearing officers maintained by the department; and

(b) Notify the parties of the appointment.

The hearing officer appointed must not be an employee of any public agency involved in the education or care of the pupil. For the purposes of this subsection, a

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person is not an employee of a public agency solely because the public agency compensates him for his services as a hearing officer.

7. Except as otherwise provided in this subsection or as the parties otherwise agree, the pupil must remain in his current placement until completion of any administrative or judicial proceedings or a decision is rendered by the hearing officer or, if an appeal is taken pursuant to NAC 388.315, the review officer. If the hearing involves an application for the pupil's initial admission to a program of a public school, the pupil, with the consent of the parent, must be placed in a public school until the completion of all the proceedings.

[Dep't of Education, eff. 12-15-77]--(NAC A by Bd. of Education, 2-7-83; 7-14-88; 9-13-91; 11-23-93)

388.310 Procedure for hearings.

1. If a parent, guardian or public agency requests a hearing pursuant to NAC 388.300, the public agency shall:

(a) Notify the parent, by certified mail, of the time and place set for the hearing;

(b) Inform the parent of any free or inexpensive legal services and other relevant services available in the area; and

(c) Inform the parent of the provisions of this section.

2. At the hearing a party to the hearing may:

(a) Be represented by counsel;

(b) Be accompanied by and advised by a person who has special knowledge of or training regarding the problems of pupils with disabilities;

(c) Present evidence;

(d) Call, examine and compel the attendance of witnesses; and

(e) Cross-examine witnesses.

3. At the hearing the parent has the right to:

(a) Have the pupil present; and

(b) Have the hearing open to the public.

4. The parent may examine all pertinent school records before the hearing.

5. A party to the hearing may object to the introduction of evidence which has not been disclosed to the opposing party at least 5 days before the hearing.

6. The public agency shall make a verbatim record of the hearing either in writing or by electronic means. Such record must be made available to any party to the hearing.

7. The public agency shall take whatever action is necessary to ensure that the parent understands the written notice and the proceedings at the hearing, including arranging for an interpreter for a parent who is deaf or whose native language is not English.

8. The public agency shall transmit the written findings of fact and decisions prepared pursuant to subsection 11 and transmit them to the Nevada department of education, special education advisory committee. Such findings and decisions must be available for public inspection after removing any personally identifiable information of the pupil.

9. The hearing must be held at a time and place reasonably convenient to the parent and the pupil involved.

10. The hearing officer shall base his decision solely on the evidence presented at the hearing.

11. The hearing officer shall render his findings of fact and decision in writing and mail a copy of the decision to the parties within 45 days after the date the head of the public agency receives the request for the hearing. The hearing officer may extend the time for rendering a decision for a specific number of days upon the request of either party.

12. The public agency shall pay the expenses of the hearing officer and any other expenses of the hearing.

13. The hearing officer must not have a personal or professional interest which would conflict with objectivity.

14. Each calendar year, the department will provide a list to each public education agency of the hearing officers and their qualifications.

15. The decision of a hearing officer is final unless the decision is appealed pursuant to NAC 388.315. A public agency may proceed without the consent of the parents pursuant to the decision of the hearing officer.

[Dep't of Education, eff. 12-15-77]--(NAC A by Bd. of Education, 2-7-83; 7-14-88; 9-13-91; 11-23-93)

388.315 Appeal from decision of hearing officer.

1. A party may appeal from the decision of a hearing officer made pursuant to NAC 388.310 within 30 days after receiving the decision. If there is an appeal, a state review officer appointed by the superintendent of public instruction from a list of officers maintained by the department will conduct an impartial review of the hearing. The officer conducting the review will:

(a) Examine the entire record of the hearing;

(b) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(c) Seek any additional evidence necessary and, if a hearing is held to receive additional evidence, afford the parties the rights set forth in NAC 388.310;

(d) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing officer;

(e) Schedule any oral arguments at a time and place which is reasonably convenient to the parent and pupil involved;

(f) Make an independent decision on the completion of the review; and

(g) Mail copies of his written findings and decision to the parties within 30 days after receipt of a written request for review. The review officer may extend the time for rendering a decision for a specific number of days upon the request of either party.

2. The decision of a review officer is final unless a party brings an action pursuant to subsection 3.

3. A party may appeal from the decision of the review officer by initiating a civil action in a court of competent jurisdiction.

4. The department shall transmit the written findings of fact and decisions and transmit them to the Nevada department of education, special education advisory committee after removing any personally identifiable information of the pupil. Such findings and decisions must be available for public inspection.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 9-13-91; 11-23-93; 1-26-94)

DETERMINATION OF ELIGIBILITY FOR PLACEMENT OF PUPILS WITH DISABILITIES AND GIFTED AND TALENTED PUPILS

388.330 Credentials required to make diagnostic decision. Any person responsible for making a diagnostic decision pursuant to NAC 388.330 to 388.440, inclusive, must:

1. Possess a license or certificate in the area of his professional discipline; and

2. Be trained in the area of assessment in question.

(Added to NAC by Bd. of Education, eff. 7-14-88)

388.335 Tests and devices for assessment. Any test or other device for assessment used pursuant to NAC 388.330 to 388.440, inclusive, must comply with

the procedures set forth in 34 C.F.R. § 300.532.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93)

For reference purposes, the federal regulations regarding evaluation procedures are cited below.

34 C.F.R. § 300.532 ***Evaluation procedures.***

State educational agencies and LEAs shall ensure, at a minimum, that:

(a) Tests and other evaluation materials--

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer.

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

388.337 Deadlines for conducting initial assessments.

1. Except as otherwise provided by subsection 2, when a public agency determines that good cause exists to assess a pupil pursuant to NAC 388.330 to 388.440, inclusive, it shall conduct the initial assessment within:

(a) Forty-five school days after the parent, or pupil if the pupil is an adult, provides written consent;

(b) Forty-five school days after the date of the decision of a hearing officer pursuant to NAC 388.310 ordering the parent to allow, or adult pupil to submit to an assessment; or

(c) At any other time agreed upon in writing by the parent or adult pupil and the public agency.

2. Upon the request of a public agency, the superintendent of public instruction may extend the deadline for conducting assessments for not more than 15 school days.

3. For the purposes of this section, "school day" means any day in which

pupils enrolled in a school are scheduled to be engaged in registration, classes, other instructional activities or testing during the required minimum daily period for each grade or department.

(Added to NAC by Bd. of Education, eff. 11-23-93)

388.340 Decisions concerning placement or eligibility.

1. No single test or other device for assessment may be used as the sole criterion for the placement of a pupil pursuant to NAC 388.330 to 388.440, inclusive. The interpretation of data obtained from an assessment and any decision concerning the placement of a pupil must be:

(a) Made in light of the physical condition, adaptive behavior and social or cultural background of the pupil; and

(b) Based upon information from a variety of sources, such as the pupil, his family, his teacher or a test of aptitude or achievement.

2. Any decision of a multidisciplinary team concerning the eligibility of a pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive:

(a) Must be justified in a written report, to be kept in the records of the pupil maintained by the public agency; and

(b) May be made by a majority of the team.

If the members of the multidisciplinary team disagree about the determination of eligibility, a minority report must be prepared if required by subsection 8 of NAC 388.420 and may be prepared in any other case.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.345 Assessment of cognitive abilities.

1. An individually administered, standardized test of cognitive ability must be used in assessing the cognitive abilities of a pupil with a disability. If a score other than the total score of the pupil on such a test is used to assess his cognitive abilities, the procedure must be justified, on the basis of professionally recognized criteria, in the records of the pupil maintained by the public agency.

2. Except as otherwise provided in this subsection, any diagnostic decision concerning an assessment of cognitive abilities must be made by a licensed school psychologist or licensed or certified psychologist. In the case of a pupil under the age of 6, any such decision may be made by a licensed school psychologist or a licensed or certified psychologist with documented training in the assessment of preschool pupils with disabilities.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.350 Assessment of social and emotional condition.

1. Except as otherwise provided in this subsection, if the social and emotional condition of a pupil with a disability is assessed, the assessment may include:

(a) Observation of the pupil;

(b) An interview of the pupil or of any person having personal knowledge of the pupil;

(c) Projective testing of the social and emotional condition of the pupil; and

(d) The use of:

(1) A behavior rating scale;

(2) An adaptive behavioral scale; and

(3) A self-report inventory.

A pupil may not be diagnosed as seriously emotionally disturbed unless a variety of these techniques is used to assess his social and emotional condition.

2. Any diagnostic decision concerning an assessment of social and emotional condition must be made by a psychologist or another certified or licensed mental health professional.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.355 Assessment of information-processing skills.

1. If the essential learning processing ability of a pupil with a disability is assessed, the assessment must include the use of:

(a) A standardized test which is designed; or

(b) One or more portions of a standardized test which is statistically validated, to measure such skills.

2. Any diagnostic decision concerning an assessment of information-processing skills must be made by a person qualified to administer and interpret tests of the kind described in this section.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.360 Assessment of adaptive behavior.

1. If the adaptive behavior of a pupil with a disability is assessed, the person conducting the assessment must use a validated adaptive behavioral scale. The assessment must include an assessment of any six or more of the following:

(a) Gross and fine motor function.

(b) Communication.

(c) Self-help.

(d) Socialization.

(e) Academic achievement.

(f) Daily living.

(g) Vocational skills.

(h) Leisure and recreational activities.

(i) Community utilization.

2. Any diagnostic decision concerning an assessment of adaptive behavior must be made by a person qualified to assess adaptive behavior through the use of an adaptive behavioral scale.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.365 Assessment of health.

1. If the health of a pupil with a disability is assessed, the assessment may include:

(a) A review of the developmental history;

(b) Hearing and vision screening;

(c) A physical examination;

(d) An audiological assessment;

(e) A physical therapy assessment; and

(f) An occupational therapy assessment, of the pupil.

2. Any diagnostic decision concerning an assessment of health must be made by a person qualified to assess the condition in issue.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.370 Assessment of speech and language.

1. If the speech and language of a pupil with a disability are assessed, the assessment may include:

(a) The use of a standardized test of speech and language;

(b) An interview of the pupil or of any person having personal knowledge of the pupil;

(c) An observation of the pupil; and

(d) The use of information from a parent or teacher of the pupil.

2. Any diagnostic decision concerning an assessment of speech and language must be made by a speech and language specialist.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.375 Assessment of academic achievement.

1. Except as otherwise provided in subsection 2, if the academic achievement of a pupil with a disability is assessed, the person conducting the assessment may use:

(a) A standardized test of academic achievement;

(b) Curriculum-based assessment; and

(c) A report by the teacher of the pupil.

2. If the assessment of academic achievement is required to determine the eligibility of the pupil for special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, the assessment must be based upon the use of a standardized test.

3. Any diagnostic decision concerning an assessment of academic achievement must be made by a person qualified to administer individually standardized tests of academic achievement to pupils.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.380 Assessment of performance in current educational setting.

1. If the performance of a pupil with a disability in his current educational setting is assessed, the assessment may include:

(a) Except as limited by subsection 2, observation of the pupil in that setting;

(b) Review of any report from a parent or teacher of the pupil;

(c) Review of samples of the work of the pupil; and

(d) Curriculum-based assessment.

2. If the assessment of performance is required to determine the eligibility of the pupil for special services and programs of instruction for pupils with specific learning disabilities, any observation conducted pursuant to paragraph (a) of subsection 1 must be conducted by a person other than the classroom teacher of the pupil.

3. Any diagnostic decision concerning an assessment of performance in the current educational setting must be made by one or more members of the multidisciplinary team having personal knowledge of the performance of the pupil.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.385 Assessment of previous educational intervention. If, with respect to a pupil with a disability, evidence of any previous educational intervention is assessed, the assessment may include consideration of the feasibility of:

1. Adapting curriculum materials to the needs of the pupil;
2. Variations in the techniques employed in teaching the pupil;
3. Tutoring of the pupil;
4. Using behavior management programs;
5. Counseling of the pupil; and
6. A change in the educational environment.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.387 Eligibility of pupil with autism.

For reference purposes, the NAC definition of autism is cited below.

388.028 "Autism" defined.

"Autism" means a disability which:

1. Significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner;

2. Is usually apparent before the age of 3 years; and

3. Adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both.

(Added to NAC by Bd. of Education, eff. 11-23-93)

1. A pupil is eligible for special services and programs of instruction for the autistic if the multidisciplinary team, comprised of the persons set forth in subsection 2, determines that he has autism. The pupil is no longer eligible for such services and programs if the multidisciplinary team concludes that he no longer has autism.

2. The multidisciplinary team must consist of:

(a) A school psychologist.

(b) A teacher of special education or a person with a specialized knowledge of autism.

(c) The regular teacher of the pupil, or, if none, a person qualified to teach him.

(d) A specialist of speech and language.

(e) One or more persons who have sufficient knowledge of the pupil to interpret information relating to his social, emotional, developmental and familial condition. Such persons may include an administrator of the school, a nurse, a parent, a counselor, a school psychologist or any other certificated or licensed professional.

3. The multidisciplinary team shall conduct an assessment of the pupil to determine whether he is eligible for special services and programs of instruction pursuant to this section. Such an assessment must evaluate the:

(a) Health;

(b) Developmental history;

(c) Cognitive abilities;

(d) Social and emotional condition;

(e) Academic achievement;

(f) Adaptive behavior; and

(g) Language and motor skills, of the pupil.

(Added to NAC by Bd. of Education, eff. 11-23-93)

388.390 Eligibility of pupil with hearing impairment.

1. Except as otherwise provided in subsection 3, a pupil with a hearing impairment is eligible for the special services and programs of instruction for the deaf if a multidisciplinary team, comprised of the persons described in subsections 7 and 8, concludes that:

(a) Routine auditory communication is impossible for the pupil, or nearly so, due to his inability to discriminate among and understand the sounds that reach him;

(b) The sense of hearing of the pupil is nonfunctional for the ordinary purposes of life, whether as the result of congenital or postlingual deafness; and

(c) The pupil has an average hearing threshold level, at 500, 1,000 and 2,000 Hz., of 92 decibels or more. As used in this subsection, "nonfunctional for the ordinary purposes of life" means that the pupil does not receive speech sounds clearly enough through hearing, with or without amplification and notwithstanding the fact that he may be aware of loud or random noises, to develop language.

2. Except as otherwise provided in subsection 3, a pupil with a hearing impairment is eligible for the special services and programs of instruction for the hard of hearing if the multidisciplinary team concludes that:

(a) The pupil has the ability, if aided, to hear and understand most spoken words;

(b) The hearing mechanism of the pupil, though defective, is sufficiently functional with or without the use of a hearing aid to allow a receptive flow of information; and

(c) The pupil has an average hearing threshold level of 30 decibels or more.

3. A pupil with a hearing impairment is eligible for the special services and programs of instruction for the deaf or hard of hearing, as appropriate, if the multidisciplinary team concludes that he meets the criterion set forth in paragraph (c) of subsection 1 or paragraph (c) of subsection 2, whichever applies, notwithstanding his failure to meet the other criteria set forth in subsection 1 or 2.

4. A pupil with a hearing impairment is eligible for the special services and programs of instruction for the deaf and blind if the multidisciplinary team concludes that he meets the criteria set forth in subsection 1, 2 or 3, whichever applies, and the criteria set forth in NAC 388.395.

5. A pupil is no longer eligible for the special services and programs of instruction referred to in this section if the multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1, 2, 3 or 4, whichever applies.

6. A pupil under the age of 6 is not ineligible, because of his age, for the special services and programs of instruction referred to in this section.

7. The multidisciplinary team may include a teacher or specialist in the field of hearing impairment and must consist of not less than three persons with expertise in one or more of the following areas:

(a) Audiology or the interpretation of an audiological report.

(b) Hearing impairment.

(c) The interpretation of an assessment of:

(1) Health.

(2) Communication skills and disorders.

(3) Academic achievement.

8. If the requirements of subsection 7 are satisfied, one or more of the following persons may serve on the multidisciplinary team:

(a) A regular classroom teacher.

(b) One or more persons qualified to interpret an assessment of the social or emotional condition of the pupil, or of the cognitive abilities of the pupil, because of his personal knowledge of the pupil. Such persons may include, without limitation, an administrator, nurse, parent, school counselor, school psychologist or any other certificated or licensed professional.

9. The conclusions of the multidisciplinary team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an assessment of the pupil. The assessment must include:

(a) A comprehensive audiological examination, including pure tone and speech discrimination tests, performed by an audiologist; and

(b) An assessment of the:

(1) Health of the pupil, which must include a comprehensive examination of vision;

(2) Academic achievement of the pupil; and

(3) Speech and language of the pupil.

10. If the requirements of subsection 9 are satisfied, the assessment of the pupil may include an assessment of his cognitive abilities and social and emotional condition.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.395 Eligibility of pupil with visual impairment.

1. A pupil with a visual impairment is eligible for the special services and programs of instruction for the severely visually impaired if a multidisciplinary team, comprised of the persons described in subsections 6 and 7, concludes that:

(a) The visual acuity of the pupil does not exceed 20/200 in the better eye;

(b) The vision of the pupil in the better eye is restricted to a field which subtends an arc of not more than 20 degrees; or

(c) The pupil suffers from a progressive deterioration of his vision, the probable result of which will be one or both of the conditions described in paragraphs

(a) and (b).

2. A pupil with a visual impairment is eligible for the special services and programs of instruction for the moderately visually impaired if the multidisciplinary team concludes that the pupil can use vision as the main channel of learning and:

(a) The visual acuity of the pupil is 20/70 or less in the better eye with the best possible correction; or

(b) The pupil suffers from a progressive deterioration of his vision, the probable result of which will be the condition described in paragraph (a).

3. A pupil with a visual impairment is eligible for the special services and programs of instruction for the deaf and blind if the multidisciplinary team concludes that he meets the criteria set forth in subsection 1 or 2, whichever applies, and the criteria set forth in NAC 388.390.

4. A pupil is no longer eligible for the special services and programs of instruction referred to in this section if the multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1, 2 or 3, whichever applies.

5. A pupil under the age of 6 is not ineligible, because of his age, for the special services and programs of instruction referred to in this section.

6. The multidisciplinary team may include a teacher or specialist in the field of vision impairment and must consist of not less than three persons with expertise in one or more of the following areas:

(a) Vision.

(b) Vision impairment.

(c) The interpretation of an assessment of health or academic achievement.

7. If the requirements of subsection 6 are satisfied, one or more of the following persons may serve on the multidisciplinary team:

(a) A regular classroom teacher.

(b) One or more persons qualified to interpret an assessment of the social or emotional condition of the pupil, or of the cognitive abilities of the pupil, because of his personal knowledge of the pupil. Such persons may include, without limitation, an administrator, nurse, parent, school counselor, school psychologist or any other certificated or licensed professional.

8. The conclusions of the multidisciplinary team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an assessment of the pupil. The assessment must include:

(a) A comprehensive examination of vision, performed by an eye specialist; and

(b) An assessment of the health and academic achievement of the pupil.

9. If the requirements of subsection 8 are satisfied, the assessment of the pupil may include an assessment of his cognitive abilities and social and emotional condition.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.400 Eligibility of pupil with orthopedic impairment.

For reference purposes, the NAC definition of orthopedic impairment is cited below.

388.067 "Orthopedic impairment" defined. *"Orthopedic impairment" means an impairment which adversely affects the ability of a person to benefit from or participate in an educational program without special education.*

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

1. A pupil with an orthopedic impairment is eligible for special services and programs of instruction for the orthopedically impaired if a multidisciplinary team, comprised of the persons described in subsection 4, concludes that the pupil suffers from a severe orthopedic impairment which adversely affects his ability to be educated. As used in this subsection, "orthopedic impairment" includes any impairment resulting from:

(a) A congenital anomaly, including clubfoot or the absence of a member;

(b) Disease, including poliomyelitis or bone tuberculosis; or

(c) Any other cause, including cerebral palsy, a neuromuscular disorder, an amputation, a fracture or a burn causing a contracture.

2. To determine whether an orthopedic impairment adversely affects a pupil's ability to be educated, an analysis must be conducted of his impairment to determine whether he can function in a regular classroom.

3. A pupil is no longer eligible for the special services and programs of instruction referred to in this section if the multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1.

4. The multidisciplinary team must consist of:

(a) A school nurse or other person qualified to interpret an assessment of the health of the pupil;

(b) A regular classroom teacher of the pupil, or, if none, a person qualified to teach him; and

(c) One of the following:

(1) A physical therapist.

(2) An occupational therapist.

(3) Any other specialist whose presence on the team is deemed appropriate.

(d) One or more persons having personal knowledge of the pupil. Such persons may include, without limitation, an administrator, nurse, parent, school counselor, school psychologist or any other certificated or licensed professional.

5. The conclusions of the multidisciplinary team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an assessment of the pupil. The assessment must include an assessment of:

(a) The health of the pupil, which must include a physical examination; and

(b) The pupil's functional limitations in relation to the demands of a regular classroom.

6. If the requirements of subsection 5 are satisfied, the assessment of the pupil may include physical therapy, occupational therapy and an assessment of his:

(a) Cognitive abilities;

(b) Social and emotional condition; and

(c) Academic achievement.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.402 Eligibility of pupil with health impairment other than orthopedic impairment.

1. A pupil is eligible for special services and programs of instruction if a multidisciplinary team, comprised of the persons described in subsection 4, concludes that he has a health impairment other than an orthopedic impairment which could reasonably be interpreted as adversely affecting the educational performance of a pupil. As used in this section, "health impairment" includes an illness which causes a person to have limited strength, vitality or alertness, including, without limitation, heart conditions, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia or diabetes.

2. As used in subsection 1, "adversely affecting the educational performance of a pupil" includes, without limitation, difficulty concentrating, chronic fatigue and impulsiveness which interfere with a pupil's ability to be educated.

3. A pupil is no longer eligible for special services and programs of instruction referred to in this section if the multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1.

4. The multidisciplinary team must consist of:

(a) A school psychologist;

(b) A teacher of special education;

(c) The regular teacher of the pupil, or, if none, a person qualified to teach him;

(d) A school nurse or other person qualified to interpret an assessment of the health of the pupil; and

(e) One or more persons with sufficient knowledge of the pupil to interpret information relating to his social, emotional, developmental and familial condition. Such persons may include an administrator of the school, a nurse, a parent, a counselor, a school psychologist or any other certificated or licensed professional.

5. The multidisciplinary team shall conduct an assessment of the pupil to determine whether he is eligible for special services and programs of instruction pursuant to this section. Such an assessment must:

(a) Evaluate the health of the pupil; and

(b) Analyze the ability of the pupil to perform in a regular classroom.

6. The assessment conducted pursuant to subsection 5 may also include an evaluation of the:

(a) Developmental history;

(b) Cognitive abilities;

(c) Social and emotional condition;

(d) Academic achievement; and

(e) Language and motor skills, of the pupil.

(Added to NAC by Bd. of Education, eff. 11-23-93)

388.405 Eligibility of pupil with speech and language impairment.

1. A pupil with a speech and language impairment is eligible for special services and programs of instruction if a multidisciplinary team, comprised of the persons described in subsection 6, concludes that:

(a) An impairment exists;

(b) The pupil has demonstrated the ability to profit from speech and language therapy; and

(c) The pupil requires a program of instruction, due to the nature or severity of his impairment, which is not feasible in his current educational setting because:

(1) Intensive remedial techniques or strategies, which can only be implemented in a clinical or therapeutic setting, are required to improve his communication skills;

(2) The nature of his impairment requires that the pupil receive the services of a teacher of the speech and language impaired; or

(3) His impairment is of such severity or multiplicity that individual or small group management, available only in a speech and language program, is required.

2. For the purposes of this section, an impairment exists if the pupil suffers from a deficit or disorder with respect to:

(a) Phonology or articulation, as indicated by the presence of three or more of the following conditions:

(1) The pupil has the physiological potential to make the neuromuscular adjustments necessary for oral expression;

(2) The communicative ability of the pupil is interfered with by his lack of intelligibility;

(3) The pupil cannot adequately discriminate, imitate or sequence sound patterns;

(4) The ability of the pupil to articulate is significantly less than that which is expected in view of his cognitive abilities and level of development; or

(5) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil;

(b) The use and comprehension of language, as indicated by the presence of two or more of the following conditions:

(1) The ability of the pupil to comprehend language is significantly less than that which is expected in view of his cognitive abilities and level of development;

(2) The use of expressive language by the pupil is significantly less than that which is expected in view of his cognitive abilities and level of development;

(3) Pragmatic use of language by the pupil is inappropriate; or

(4) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil;

(c) Fluency of speech, as indicated by the presence of two or more of the following conditions:

(1) The speech of the pupil is observed to be dysfluent;

(2) The severity of the deficit or disorder is such that it interferes with communication by the pupil; or

(3) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil; or

(d) The quality, pitch or intensity of his voice, as indicated by the presence of two or more of the following conditions:

(1) Voice therapy is recommended by:

(I) A physician; or

(II) Another person certified as a specialist in the identification and treatment of oral, nasal or laryngeal anomalies;

(2) The severity of the deficit or disorder is such that it interferes with communication by the pupil; or

(3) The deficit or disorder has an adverse social, emotional or academic effect upon the pupil.

3. A pupil with limited proficiency in English is eligible for the special services and programs of instruction referred to in this section, on the same basis as other pupils, if his impairment:

(a) Manifests itself in his native language and in English; and

(b) Is not attributable to the phonological system of his native language, or to dialectical differences of articulation and language form between that language and English.

4. A pupil is no longer eligible for the special services and programs of instruction referred to in this section if:

(a) The multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1; or

(b) The committee responsible for developing the pupil's individualized educational program concludes that he no longer requires the services or programs.

5. A pupil under the age of 6 is not ineligible, because of his age, for the special services and programs referred to in this section.

6. The multidisciplinary team must consist of:

(a) A speech and language specialist;

(b) A regular classroom teacher;

(c) If the pupil has another disability in addition to his speech and language impairment, a special education teacher; and

(d) If he is not otherwise a member of the team, a person having personal knowledge of the pupil. This person may be, without limitation, an administrator, nurse, parent, school counselor, school psychologist or any other certificated or licensed professional.

7. The conclusions of the multidisciplinary team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this

section must be based upon an assessment of the pupil. The assessment must include an evaluation of:

(a) The performance of the pupil relating to language, articulation, fluency or voice, as relevant to his impairment;

(b) The health of the pupil; and

(c) If relevant to his eligibility for the special services and programs of instruction referred to in this section, the cognitive abilities, academic achievement and social and emotional condition of the pupil.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.407 Eligibility of pupil with traumatic brain injury.

For references purposes, the NAC definition of traumatic brain injury is cited below.

388.134 "Traumatic brain injury" defined. *"Traumatic brain injury" means an injury to the brain caused by an external force that results in the total or partial functional disability or psychosocial impairment of a person, or both. Except as otherwise provided in this section, the term applies to any injury to the brain which adversely affects educational performance including, without limitation, injuries affecting the:*

1. *Cognitive abilities;*
2. *Speech;*
3. *Language;*
4. *Information processing;*
5. *Memory;*
6. *Attention;*
7. *Reasoning;*
8. *Abstract thinking;*
9. *Judgment;*
10. *Problem solving abilities;*
11. *Sensory, perceptual and motor skill abilities;*
12. *Psychosocial behavior; and*
13. *Physical functions, of a person. The term does not include injuries to the brain that are congenital or degenerative or which are induced by trauma during birth.*

(Added to NAC by Bd. of Education, eff. 11-23-93)

1. A pupil is eligible for special services and programs of instruction if a multidisciplinary team, comprised of the persons described in subsection 2, concludes that he has a traumatic brain injury. The pupil is no longer eligible for such services and programs of instruction if the multidisciplinary team determines that he no longer has a traumatic brain injury.

2. The multidisciplinary team must consist of:

(a) A school psychologist;

(b) A teacher of special education or a person with a specialized knowledge of traumatic brain injuries;

(c) The regular teacher of the pupil, or, if none, a person qualified to teach him;

(d) A specialist of speech and language;

(e) A school nurse or other person who is qualified to assess the health of the pupil; and

(f) One or more persons with sufficient knowledge of the pupil to interpret information relating to his social, emotional, developmental and familial condition. Such

persons may include an administrator of the school, a nurse, a parent, a counselor, a school psychologist or any other certificated or licensed professional.

3. In making a determination pursuant to subsection 1, the multidisciplinary team shall consider, without limitation:

(a) Medical documentation of the injury;

(b) The pupil's educational performance relative to a normative population;

(c) The pupil's strengths and weaknesses; and

(d) If possible, the pupil's educational performance before and after he acquired the injury.

4. In addition to the considerations required pursuant to subsection 3, the multidisciplinary team shall conduct an assessment of the pupil to determine whether he is eligible for special services and programs of instruction pursuant to this section. Such an assessment must evaluate the:

(a) Health;

(b) Developmental history;

(c) Cognitive abilities;

(d) Social and emotional condition;

(e) Academic achievement;

(f) Language and motor skills;

(g) Sensory and perceptual abilities; and

(h) Attention, comprehension, judgment and problem-solving skills, of the pupil.

(Added to NAC by Bd. of Education, eff. 11-23-93)

388.410 Eligibility of mentally retarded pupil.

1. A pupil is eligible for special services and programs of instruction for the mildly mentally retarded if a multidisciplinary team, comprised of the persons described in subsections 6 and 7, concludes that:

(a) His measured cognitive abilities, as determined by an acceptable individual standardized test, are at least two standard deviations below the mean score for that test;

(b) His adaptive behavior, in comparison with that of members of his chronological peer group, indicates that he is experiencing difficulty; and

(c) His academic achievement is generally consistent with his cognitive abilities and adaptive behavior.

2. A pupil is eligible for special services and programs of instruction for the moderately mentally retarded if the multidisciplinary team concludes that:

(a) His measured cognitive abilities, as determined by an acceptable individual standardized test, are at least three standard deviations below the mean score for that test;

(b) His adaptive behavior, in comparison with that of members of his chronological peer group, indicates that he has markedly lower capabilities; and

(c) His academic achievement and speech and language development is generally consistent with his cognitive abilities and adaptive behavior.

3. A pupil is eligible for special services and programs of instruction for the severely mentally retarded if the multidisciplinary team concludes that:

(a) His measured cognitive abilities, as determined by an acceptable individual standardized test, are at least four standard deviations below the mean score for that test;

(b) His adaptive behavior, in comparison with that of members of his chronological peer group, indicates that he has extensively lower capabilities; and

(c) His developmental functioning is generally consistent with his cognitive abilities and adaptive behavior.

4. A pupil is eligible for special services and programs of instruction for the profoundly mentally retarded if the multidisciplinary team concludes that:

(a) His measured cognitive abilities, as determined by an acceptable individual standardized test, are at least five standard deviations below the mean score for that test;

(b) His adaptive behavior, in comparison with that of members of his chronological peer group, indicates that he has extremely limited capabilities; and

(c) His developmental functioning is generally consistent with his cognitive abilities and adaptive behavior.

5. A pupil is no longer eligible for the special services and programs of instruction referred to in this section if:

(a) The multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1, 2, 3 or 4, whichever applies; or

(b) The committee responsible for developing the pupil's individualized educational program concludes that he has been successfully integrated into the regular education program without the support of specially designed instruction or specialized related services.

6. The multidisciplinary team must consist of:

(a) A school psychologist;

(b) A special education teacher or specialist in the field of mental retardation;

(c) A speech and language specialist; and

(d) One or more persons qualified, because of personal knowledge of the pupil, to interpret:

(1) Assessments of the health and adaptive behavior of the pupil; and

(2) Information relating to the family of the pupil. The person or persons described in this paragraph may be one or more of the persons described in paragraphs (a), (b) and (c) of this subsection and may, without limitation, be an administrator, nurse, parent, school counselor, school psychologist or any other certificated or licensed professional.

7. If the requirements of subsection 6 are met, one or more of the following persons may serve on the multidisciplinary team:

(a) The principal of the school attended by the pupil;

(b) A regular classroom teacher;

(c) An occupational therapist;

(d) A physical therapist; and

(e) Any other specialist whose presence on the team is deemed appropriate.

8. The conclusions of the multidisciplinary team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an assessment of the pupil. The assessment must include an assessment of:

(a) The cognitive abilities of the pupil;

(b) The adaptive behavior of the pupil, including prevocational and vocational assessments if appropriate;

(c) The health of the pupil, including a developmental history;

(d) The academic achievement of the pupil; and

(e) The performance of the pupil relating to speech and language.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.415 Eligibility of emotionally disturbed pupil.

1. A pupil is eligible for special services and programs of instruction for the seriously emotionally disturbed if a multidisciplinary team, comprised of the persons described in subsection 5, concludes that:

(a) The pupil exhibits one or more of the characteristics described in subsection 2;

(b) These characteristics have been evident for at least 3 months;

(c) The characteristics adversely affect the ability of the pupil to perform developmental tasks appropriate to his age:

(1) Within the educational environment, despite the provision of intervention strategies; or

(2) In the case of a pupil under school age, in the home, child care or preschool setting; and

(d) Special education support is required to alleviate these adverse effects.

2. The requirement of paragraph (a) of subsection 1 is satisfied by the consistent manifestation of any of the following characteristics:

(a) An inability of the pupil to build or maintain satisfactory interpersonal relationships within the school environment, including:

(1) Withdrawal and isolation of the pupil from others.

(2) Efforts by the pupil to obtain negative attention from others through punishment, ostracism or excessive approval.

(b) Inappropriate behavior or feelings under normal circumstances, including atypical behavior such as outbursts of anger, crying or head banging, without apparent cause or reason.

(c) A pervasive mood of unhappiness or depression.

(d) Fears or a tendency to develop physical symptoms associated with personal or school problems.

3. A pupil is not eligible for the special services and programs of instruction referred to in subsection 1 solely because:

(a) He exhibits the characteristics described in subsection 2 because of sensory, intellectual or health factors; or

(b) He is socially maladjusted or has a conduct problem. A pupil who is socially maladjusted or has a conduct problem may not be determined to be eligible for special services and programs of instruction unless the multidisciplinary team concludes, based upon an assessment of the pupil, that he meets the criteria of eligibility set forth in NAC 388.330 to 388.440, inclusive.

4. A pupil is no longer eligible for the special services and programs of instruction referred to in this section if:

(a) The multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1; or

(b) The committee responsible for developing the pupil's individualized educational program concludes that the pupil has been successfully placed in the regular program on a full-time basis.

5. The multidisciplinary team must consist of:

(a) A school psychologist;

(b) A regular classroom teacher;

(c) A special education teacher or specialist in the field of serious emotional disturbances; and

(d) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to his health, development, family, and social and emotional condition. This person may be, without limitation, an administrator, nurse, parent, school counselor, school psychologist or any other certificated or licensed professional.

6. The conclusions of the multidisciplinary team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an assessment of the pupil. The assessment must include an evaluation of:

(a) The social and emotional condition of the pupil, based in part upon information from the pupil;

(b) The health and cognitive abilities of the pupil;

(c) The performance of the pupil in his current educational setting; and

(d) Any previous educational intervention on behalf of the pupil.

7. As used in this section, "socially maladjusted" and "conduct problem" mean behavior characterized by knowledge of social expectations and intentional disregard of those expectations.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.420 Eligibility of pupil with specific learning disabilities.

1. A pupil is eligible for special services and programs of instruction for pupils with specific learning disabilities if a multidisciplinary team, comprised of the persons described in subsection 6, concludes that:

(a) The pupil exhibits a deficit in auditory or visual discrimination, memory, association or perception, visual- motor integration, auditory-visual integration or any other essential learning process;

(b) Except as otherwise provided in subsection 4, the pupil exhibits a severe discrepancy between predicted and actual achievement in oral expression, comprehension in listening, mathematical calculation or reasoning, written expression, basic reading skills or comprehension in reading; and

(c) Pre-referral intervention strategies have not remedied the deficit.

2. If the identification of a deficit, of a kind described in subsection 1, is based upon one part of a test, the existence of the deficit must be confirmed by another assessment technique. If two or more assessment techniques give conflicting results concerning the existence of a deficit, the diagnosis of a deficit must be justified.

3. Except as otherwise provided in this subsection, the existence of a discrepancy between predicted and actual achievement must be determined through the use of a statistically valid formula, as prescribed by the department, which takes into account the age and level of ability of the pupil, the correlation between tests of ability and achievement, and the reliability of each test used. The department will prescribe this formula on the basis of consultation with an appropriate representative of each public agency affected. In the case of a pupil under the age of 6, a discrepancy may be identified through the use of one or more tests of language concepts or academic readiness skills.

4. A pupil otherwise eligible for the special services and programs of instruction referred to in this section is not eligible if the discrepancy between his predicted and actual achievement is primarily the result of:

(a) A visual, hearing or motor impairment;

(b) Mental retardation;

(c) A serious emotional disturbance; or

(d) An environmental, cultural or economic disadvantage.

5. A pupil is no longer eligible for the special services and programs of instruction referred to in this section if:

(a) The multidisciplinary team concludes that he no longer meets the criteria set forth in subsection 1; or

(b) The committee responsible for developing the pupil's individualized educational program concludes that he:

(1) Has made sufficient progress in meeting the goals of his individualized educational program; and

(2) Has demonstrated his ability to function adequately, in view of his cognitive abilities, during a full-time trial placement in the regular program of not less than 9 nor more than 18 weeks.

6. The multidisciplinary team must consist of:

(a) The regular teacher of the pupil or, if he does not have a regular teacher, a teacher qualified to teach a pupil of his age;

(b) A special education teacher or specialist with knowledge in the area of the suspected disability;

(c) A school psychologist; and

(d) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to his health, family, and social and emotional

condition. This person may be, without limitation, an administrator, nurse, parent, school counselor, school psychologist or any other certificated or licensed professional.

7. The conclusions of the multidisciplinary team concerning the eligibility of the pupil must be based upon an assessment of the pupil. The assessment must include:

(a) An evaluation of:

(1) The cognitive abilities of the pupil;

(2) The social and emotional condition of the pupil;

(3) The academic achievement of the pupil;

(4) The performance of the pupil in his current educational setting;

(5) Any previous educational intervention on behalf of the pupil;

(6) The health and developmental history of the pupil; and

(7) The essential learning processing skills of the pupil; and

(b) An observation of the academic performance of the pupil in his classroom or, in the case of a pupil under school age, in an environment appropriate for a child of his age. This observation must be conducted by someone other than the regular teacher of the pupil.

8. The multidisciplinary team must prepare a written report of its conclusions. The report must include:

(a) A statement whether the pupil has a specific learning disability;

(b) The basis for making that determination;

(c) A description of the relevant behavior noted during the observation of the pupil;

(d) A statement of the relationship of that behavior to the academic functioning of the pupil;

(e) Any educationally relevant medical findings;

(f) A statement whether there is a severe discrepancy between the predicted and actual achievement of the pupil which cannot be corrected without special education and related services;

(g) The conclusion of the team concerning the effect upon the pupil of any environmental, cultural or economic disadvantage; and

(h) A certification by each member of the team that the report reflects his conclusions or, if the report does not reflect the conclusions of a member, a statement of the conclusions of that member.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.425 Eligibility of pupil with multiple impairments.

1. A pupil who meets the requirements for eligibility set forth in NAC 388.410 for the mentally retarded is eligible for the special services and programs of instruction for persons with multiple impairments if a multidisciplinary team, comprised of the persons described in subsection 3, concludes that he meets the requirements for eligibility for any additional disabling condition, other than a specific learning disability, developmental delay or a speech and language impairment, set forth in NAC 388.330 to 388.440, inclusive.

2. A pupil is no longer eligible for the special services and programs of instruction referred to in this section if the multidisciplinary team concludes that he no longer meets the criteria referred to in subsection 1.

3. The multidisciplinary team must consist of:

(a) The persons described in subsection 6 of NAC 388.410; and

(b) To the extent their presence on the team is not provided for by paragraph (a) of this subsection, the persons included on the team pursuant to:

(1) Subsections 7 and 8 of NAC 388.390;

(2) Subsections 6 and 7 of NAC 388.395;

(3) Subsection 4 of NAC 388.400;

(4) Subsection 5 of NAC 388.415;

(5) Subsection 4 of NAC 388.402;

(6) Subsection 2 of NAC 388.407; or

(7) Subsection 2 of NAC 388.387, whichever applies.

4. The conclusions of the multidisciplinary team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an assessment of the pupil. The assessment must include an assessment of:

(a) The information described in subsection 8 of NAC 388.410; and

(b) To the extent its assessment is not provided for by paragraph (a) of this subsection, the information included in the assessment pursuant to:

(1) Subsections 9 and 10 of NAC 388.390;
(2) Subsections 8 and 9 of NAC 388.395;
(3) Subsections 5 and 6 of NAC 388.400;
(4) Subsection 6 of NAC 388.415;
(5) Subsections 5 and 6 of NAC 388.402;
(6) Subsections 3 and 4 of NAC 388.407; or
(7) Subsection 3 of NAC 388.387, whichever applies.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.430 Identification of certain pupils as developmentally delayed.

1. Except as otherwise provided in subsection 5, a pupil under the age of 6 may be identified as developmentally delayed if a multidisciplinary team, comprised of the persons described in subsections 2 and 3, concludes that he demonstrates a delay of at least two standard deviations in one, or at least one standard deviation in two or more, of the following areas:

(a) Receptive or expressive language.
(b) Cognitive abilities.
(c) Gross or fine motor function.
(d) Self-help.
(e) Social or emotional condition.

2. In a case governed by this section, the multidisciplinary team must consist of:

(a) A special education teacher or specialist in the field of early childhood education;

(b) A licensed school psychologist or a licensed or certified psychologist with documented training in the assessment of preschool pupils with disabilities; and

(c) One or more persons qualified, because of personal knowledge of the pupil, to interpret information relating to his health, family, and social and emotional condition. This person may be, without limitation, an administrator, nurse, parent, school counselor, school psychologist or any other certificated or licensed professional.

3. If the requirements of subsection 2 are satisfied, the multidisciplinary team may include one or more persons who provide related services, including speech and language therapy, physical or occupational therapy and psychological services.

4. The conclusions of the multidisciplinary team concerning the identification of the pupil as developmentally delayed must be based upon an assessment of the pupil. The assessment must include an assessment of the health, developmental functioning, and social and emotional condition of the pupil.

5. In a case governed by this section, a pupil may no longer be identified as developmentally delayed if:

(a) He maintains appropriate developmental functioning in all developmental areas for 6 months or more, and the multidisciplinary team concludes that special education services are no longer necessary; or

(b) He reaches the age of 6 on or before September 30 of the current school year.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 11-23-93)

388.435 Eligibility of gifted and talented pupil.

1. Except as otherwise provided in subsection 2, a pupil is eligible for special services and programs of instruction for the gifted and talented if a team, comprised of persons selected by the public agency, concludes that the pupil has:

(a) General intellectual ability or academic aptitude in a specific area that is demonstrated by a score at or above the 98th percentile:

(1) On a test of cognitive ability that is individually administered;

(2) In a major content area on a nationally standardized achievement test that is individually administered in kindergarten through eighth grade; or

(3) In a major content area on a nationally standardized achievement test, the Preliminary Scholastic Aptitude Test (PSAT), the Scholastic Aptitude Test (SAT) or the American College Test (ACT) that is administered to a group of students for grades 9 through 12, inclusive; or

(b) An area of talent, including, but not limited to, creative thinking, productive thinking, leadership, ability in the visual arts or ability in the performing arts, as determined by the local public agency of the pupil.

2. In determining the eligibility of a pupil for the special services and programs of instruction referred to in this section, the team may use alternative assessment procedures for a pupil from another culture, a pupil who is environmentally or economically deprived or a pupil who has a disability.

3. A pupil under the age of 6 is not ineligible, because of his age, for the special services and programs referred to in this section.

4. The conclusions of the team concerning the eligibility of the pupil for the special services and programs of instruction referred to in this section must be based upon an assessment of the talent, cognitive abilities or academic achievement of the pupil.

5. Unless his individualized educational program otherwise provides, a pupil who is gifted and talented must participate in not less than 150 minutes of differentiated educational activities each week during the school year.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93)

388.440 Periodic reassessment of pupil.

1. Except as otherwise provided in this subsection and in subsection 2, a pupil receiving special services and programs of instruction pursuant to NAC 388.330 to 388.440, inclusive, other than for the gifted and talented, must be reassessed at least once every 3 years. A reassessment must be conducted more frequently if conditions warrant or if a reassessment is requested, based upon a reasonable belief that a change in the condition of the pupil has occurred, by the parent or teacher of the pupil or any other member of the committee responsible for developing the pupil's individualized educational program.

2. In the case of a pupil with a disability who is placed in a program of early childhood education, the reassessment required by subsection 1 must occur on an ongoing basis. At least every 6 months, the parents of such a pupil must be given the opportunity to participate in a review of his progress.

3. Each reassessment of a pupil must be conducted in the manner prescribed by the appropriate multidisciplinary team in accordance with the needs of the pupil. Such a reassessment also must comply with the requirements set forth in NAC 388.335.

4. Upon the completion of the reassessment, the multidisciplinary team shall issue a written report which includes a statement of any disability found to exist and the basis for any determination of continued eligibility. If the members of the multidisciplinary team disagree about the determination of eligibility, a minority report:

(a) Must be prepared if required by subsection 8 of NAC 388.420; and

(b) May be prepared in any other case.

(Added to NAC by Bd. of Education, eff. 7-14-88; A 9-13-91; 11-23-93)

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388.450 Independent assessment of pupil.

1. A parent may request a public agency to pay for an additional, independent assessment of a pupil if the parent disagrees with the results of an assessment obtained by the department of education or the public agency. The public agency may request a hearing pursuant to NAC 388.300 if it believes that its assessment of the pupil is appropriate.

2. If at such a hearing the hearing officer decides that an additional, independent assessment is appropriate, the public agency shall pay for it. If the hearing officer decides that the assessment is not appropriate, the parent may obtain the additional assessment at his own expense.

3. If the parent so requests, the public agency shall provide him with information as to where an independent assessment may be obtained.

4. If the parent obtains an independent assessment at his personal expense, the public agency shall consider the results of the assessment in any decision made with respect to the provision of a free appropriate public education. The results may be presented as evidence at a hearing regarding that pupil.

5. If a hearing officer requests an independent assessment as part of a hearing, the cost of the assessment must be paid by the public agency.

6. Whenever an independent assessment is obtained at the public agency's expense, the circumstances under which the assessment is obtained, including the location of the assessment and the qualifications of the examiner must be the same as the public agency uses when it initiates an assessment.

(Added to NAC by Bd. of Education, eff. 2-7-83; A 7-14-88; 9-15-89; 9-13-91; 11-23-93)